

REMARKS

In response to the Office Action mailed January 5, 2011, Applicants respectfully request reconsideration. Claims 1-3 and 5-10 were previously pending for examination. Claim 1 is herein amended. No claims have been added. Withdrawn claims 11-17 have been canceled. As a result, claims 1-3 and 5-10 are currently pending, with claim 1 being independent. No new matter has been added.

Examiner Interview

Applicant's below named representatives would like to thank the Examiner for the interview held March 28, 2011. During the interview, Applicant's Representative and the Examiner discussed proposed claim amendments and the prior art, the substance of that discussion is incorporated herein. In addition, the Examiner indicated that independent claim 1, with the additional limitation of the second parts being designed to be placed in direct contact with the first parts, would distinguish the prior art of record. Applicant's Representative agreed to submit a formal written response incorporating the above noted claim amendment and the arguments discussed during the interview.

Rejections Under 35 U.S.C. §112

The Office Action rejects independent claim 1 under 35 U.S.C. §112 second paragraph stating that the term "high amount" is indefinite (Office Action page 2). As discussed during the interview, Applicants have amended current claim 1 to recite, "wherein the crust-forming fire-retardant material is present in such a ~~high~~ an amount that a fire retardant crust is formed on a side of the foam when exposed to a fire." Since the amount is defined in terms of the specific result achieved, Applicants respectfully submit that currently amended claim 1 is definite. Consequently, Applicants respectfully request that the rejection of independent claim 1 under 35 U.S.C. §112 second paragraph be withdrawn. The Examiner concurred with this amendment.

Rejections Under 35 U.S.C. §103(a)

The Office Action rejects previously presented independent claim 1 under 35 U.S.C. §103(a) as purportedly being unpatentable over Cordts et al. (U.S. Patent No. 2004/0093814) in view of Atkinson et al. (Great Britain Patent No. 2,226,033A), in view of Beele (U.S. Patent No. 5,344,106), in further view of Horacek et al. (U.S. Patent No. 5,232,976).

Without acceding to the propriety of the rejection, Applicants have herein amended independent claim 1 to more clearly specify the sealing action of the first and second parts, namely claim 1 now recites, “the first parts being designed to at least partly envelop the transport device and the second parts being designed to be placed in direct contact with and between the first parts and/or in direct contact with and between the first parts and an inner wall of the opening to at least virtually completely seal the opening...” These limitations are supported throughout the application including, for example, original Fig. 1 and paragraphs [0009] and [0047].

As discussed during the Interview, the phrase “in direct contact with” is merely intended to highlight how the first and second parts are assembled to, “virtually completely seal the opening...” as already stated in the claim. During the interview, the Examiner defined slats 16 and fire stop material 30 of Cordts as the first and second parts respectively. As shown in Fig. 3 of Cordts slats 16 and fire stop material 30 are vertically spaced apart from one another. Consequently, Applicants respectfully submit that Cordts does not explicitly or inherently disclose the second parts being designed to be placed in direct contact with the first parts to at least virtually completely seal the opening. For at least this reason, independent claim 1 patentably distinguishes from the cited prior art references.

In addition to the above, the Office Action states that paragraphs [0029]-[0033] and [0038] of Cordts teach the use of a closed cell foam fire barrier (Office Action page 5). Applicants respectfully disagree with this characterization of Cordts.

Paragraphs [0029] - [0033] of Cordts are directed to fire stop material 30. In particular, paragraph [0030] states that fire stop material 30 may be an intumescent material, an endothermic material, a combination of intumescent material and endothermic material, or other conventional fire stop materials. Applicants respectfully submit that the use of intumescent materials, endothermic materials, and conventional fire stop materials does not explicitly or inherently disclose the use of a foam. The only specific reference to a foam within the entirety of Cordts is in cited paragraph [0038]. However, paragraph [0038] is merely directed to the optional smoke barrier. There simply is no reason one of skill in the art would wish to combine these two different materials intended for two separate purposes. Therefore, Cordts teaches the use of a foam for the purpose of blocking smoke, not for use as a fire barrier material. Consequently, Applicants respectfully submit that Cordts does not disclose explicitly or inherently, “the second parts being manufactured from a fire-resistant material based on an elastomeric foam with a substantially closed cell structure...” For at least this reason, independent claim 1 is patentably distinguishable from the cited prior art references.”

Applicants also respectfully submit that Horacek does not teach, “including at least one crust-forming, fire-retardant material, wherein the crust-forming fire-retardant material has been chosen from polyammonium phosphate or melamine phosphate, and wherein the crust-forming fire-retardant material is present in such an amount that a fire retardant crust is formed on a side of the foam when exposed to a fire.”

Horacek mentions the use of melamine and its derivatives and polyammonium phosphates (Horacek col. 2 line 67 – col. 3 line 2). However, Horacek only refers to these compounds for there difference in decomposition temperature relative to expandable graphite (Horacek col. 3 lines 3 – 6). Furthermore, Horacek states that the inclusion of the above noted compounds provides increasing expansion pressures with rising temperatures (Horacek col. 3 lines 6 – 8). Applicants respectfully submit, that an increasing expansion pressure is contrary to the formation of a crust. This position is supported by the disclosure of Horacek. Horacek specifically states that further additives can be used to consolidate the crust and increase cohesion of the sealing compound when it is in the expanded state (Horacek col. 3 lines 9 – 26). However, Applicants note that neither

polyammonium phosphate nor melamine phosphate are listed as additives for consolidating the crust. Consequently, Horacek merely teaches the use of melamine and its derivatives and polyammonium phosphates for the purpose of providing an increasing expansion pressure for a material exposed to a fire. There simply is no inherent or explicit disclosure within Horacek that would lead one of skill in the art to include polyammonium phosphate or melamine phosphate in such an amount that a fire retardant crust is formed on a side of the foam when exposed to a fire. For at least this reason, independent claim 1 patentably distinguishes from the cited prior art references.

Claim 1 is patentably distinct from the cited references for at least the above stated reasons. Consequently, Applicants respectfully request that the rejections of claim 1 be withdrawn.

Dependent Claims

The Office Action rejects claims 2-3 and 5-10 under 35 U.S.C. §103(a). Dependent claims 2-3 and 5-10 depend from independent claim 1 and are allowable for at least the same reasons. Consequently, Applicants believe that it is unnecessary at this time to argue the further distinguishing features of these claims. In view of the above, Applicants respectfully request that the rejections of dependent claims 2-3 and 5-10 be withdrawn.

CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance to discuss any outstanding issues relating to the allowability of this application.

If the response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. Applicants believe no fee is due with this response. However, if a fee is due, please charge Deposit Account No. 23/2825 under Docket No. B1215.70011US00 from which the undersigned is authorized to draw.

Dated: *April 4, 2001*

Respectfully submitted,

By 

Neil P. Ferraro

Registration No.: 39,188

John S. Harmon, Ph.D., P.E.

Registration No.: 67,131

WOLF, GREENFIELD & SACKS, P.C.

600 Atlantic Avenue

Boston, Massachusetts 02210-2206

617.646.8000

Attachments